

Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR-Amex-95-28 and should be submitted by October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

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[Release No. 34-36320; File No. SR-AMEX-95-15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Solicitation of Options Transactions

September 29, 1995.

I. Introduction and Background

On March 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Rule 950(d), Commentary .03, to modify the manner in which members solicit other members to participate in options transactions. The Exchange filed Amendment No. 1 to the proposed rule change on May 30, 1995.³ Notice of the proposal, as amended, appeared in the **Federal Register** on June 9, 1995.⁴ No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

In 1989, the Exchange adopted its solicitation rule⁵ to govern the manner in which members may solicit other members and non-member broker dealers to participate in options transactions. Generally, members solicit participation in large size orders and orders that might contain complex terms and conditions, including orders involving both stocks and options. Currently, if the solicited party is a broker dealer other than a registered trader, the rule permits the solicitation of such a broker dealer to participate in trades without first attempting to determine whether the trading crowd wishes to participate. Generally, Rule 950(d) has sought to reconcile the growing practice of soliciting participation in orders outside of trading crowds with the rules and practices of the auction market.

Currently, the rule permits the solicitation of on-floor and off-floor members outside of a trading crowd to participate as the contra-side of an order so long as the trading crowd is given (1) the same information about the options order that is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. With respect to the solicitation of a registered options trader, however, the soliciting member must also disclose to the trading crowd, prior to the solicitation, the same terms and conditions that will be disclosed to the solicited registered options trader.

The Exchange proposal modifies the solicitations rule to eliminate the requirement that the terms and conditions of a solicitation be disclosed to the trading crowd prior to the solicitation of registered options traders. Thus, once other market participants in the trading crowd are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order, or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders and stating the quantity and price. In effect, registered traders will have the same standards apply to them as have broker dealers who are not registered traders.

The Exchange's proposal also adds language to Rule 950(d) that states explicitly that non-solicited market participants and floor brokers holding non-solicited discretionary orders in the

trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.⁶

Finally, the Exchange's proposal codifies its policy that the solicitations rule also applies to the solicitation of non-member broker dealers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange's proposal seeks to eliminate the requirement that a soliciting member first disclose to a trading crowd the terms and conditions of the order prior to the solicitation of a registered trader, but requires that the trading crowds be given a reasonable opportunity to accept the bid or offer,⁸ after the terms and conditions of the order are announced.

The Commission believes that the Amex's proposal strikes a proper balance of allowing members to solicit, in advance, the other side of an order, while ensuring at the same time that the order will be exposed to the trading crowd consistent with auction market principles. Specifically, the Amex's proposal addresses the concern that Amex members who solicit orders may at times find it difficult to determine prior to the solicitation whether the solicited party is a registered options trader by removing the distinction between broker dealers who are

¹⁸ 17 C.F.R. 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1994).

³ Amendment No. 1 concerns the priority of non-solicited market participants and floor brokers in the trading crowd over solicited parties or solicited orders. In addition, Amendment No. 1 makes certain minor technical and clarifying modifications to the proposed changes to Amex Rule 950(d), Commentary .03. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated May 26, 1995 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 35797, (June 1, 1995), 60 FR 30612.

⁵ Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 (approving Amex Rule 950(d), Commentary .03).

⁶ Amex Rule 155 generally provides that a specialist shall give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.

⁷ 15 U.S.C. 78f(b)(5) (1988).

⁸ Since the size and complexity of orders for options can vary widely, the phrase "reasonable opportunity to accept the bid and offer" has not been specifically defined. However, the Exchange has stated that the following factors should be considered when deciding whether a reasonable opportunity has been given: (1) size and complexity of the order; (2) ease of executing hedging transactions in the underlying stock; and (3) effect of the options order on the positions held by participants in the trading crowd.

registered options traders, and those who are not.

The Commission further finds that adding language to Rule 950(d) regarding the priority of non-solicited market participants and floor brokers holding non-solicited discretionary orders serves to make explicit a provision already implicit in the Exchange's solicitations rule. Again, this provision will ensure that solicited orders will be exposed to the trading crowd consistent with auction market principles and that such orders do not receive any special priority consistent with Amex Rule 155. For similar reasons, the Commission finds that codifying the Amex's policy that its solicitations rule applies to the solicitation of non-member broker dealers is consistent with the Act.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-95-15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,

Secretary.

[FR Doc. 95-25020 Filed 10-6-95; 8:45 am]

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[Release No. 34-36325; File No. SR-PSE-95-23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Corporate Governance

October 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 2, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange pursuant to Rule 19b-4 of the Act submits this rule filing to amend Article II, Section 1(a), and Article III, Section 2(a) of the Constitution of the PSE, to provide for an additional public Governor on the Board of Governors. The text of the proposed rule change is available at the PSE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Article II of the Constitution of the PSE provides for eighteen (18) elected Governors, of whom five (5) are representatives of the public. The proposed rule change will provide for one additional public Governor, and will thereby increase the total number of elected Governors to nineteen (19).

When the Commission's Chairman, Arthur Levitt, met with the PSE Board of Governors ("Board") at its December 14, 1994 meeting, he discussed the important role boards play at the securities exchanges in promoting the investing public's confidence in the

integrity of U.S. securities markets. At its meeting on January 26, 1995, the Governors discussed Chairman Levitt's observation about the composition of the PSE Board and were in agreement with Chairman Levitt that public, non-industry representatives on exchange boards convey a message to public investors that their interests will be protected, as well as bring additional business expertise to the Exchange in areas other than securities. The Board also considered the major contributions of the five (5) current public Governors and their increased time commitments to Exchange matters (e.g., technology, finance and banking). Therefore, the Board unanimously approved the addition of a public Governor, increasing the number of public representatives from five to six.

2. Statutory Basis

The proposed rule filing is consistent with Section 6(b)(3) and Section 6(b)(5) of the Act, in that it will assure a fair representation of the members in the selection of its Governors and administration of its affairs, and is designed to promote just and equitable principles of trade, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The amendments were approved by the PSE Membership in accordance with Article XVII of the PSE Constitution.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

⁹ 15 U.S.C. 78f(b)(5) (1988).

¹⁰ 17 CFR 200.30-3(a)(12) (1994).

¹ See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Glen Barrentine, Senior Counsel, SEC, dated October 2, 1995. In Amendment No. 1, the Exchange requests that the proposed rule change be considered under Section 19(b)(2), rather than Section 19(b)(3)(A) as originally filed, and approved on an accelerated basis.